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February 8, 2024

David J. Smith
Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

Filed via CM/ECF

Re: Response to EPA's Rule 28(j) Citation of *Hunt Refining Co. v. EPA*,
No. 22-11617 ("*Hunt*") as Supplemental Authority in *Alabama, et al.*
v. U.S. EPA, Case No. 23-11173

Dear Mr. Smith:

Contrary to Respondent's assertion, this Court's analysis in *Hunt* confirms venue in this case is only appropriate in this Court. In fact, the Court goes to lengths to distinguish disapprovals of State Implementation Plans ("SIPs")—the exact action at issue here—from the hardship exemptions addressed in *Hunt*. *See* slip op. 10 ("SIP disapprovals were locally or regionally applicable," "EPA had not shown that the SIP disapprovals had nationwide scope or effect," and "this case do[es] not involve SIP approvals or disapprovals").

EPA's *Hunt* denial was deemed nationally applicable because "EPA did not base its denials on refinery-specific circumstances," rather EPA's determination was "applicable to all small refineries no matter their location." *Id.* 8-9. But EPA itself agrees the opposite is true here. *See* 88 Fed. Reg. 9,336, 9,354 (Feb. 13, 2023) ("each individual state's submission w[as] evaluated on [its] own merits"). Accordingly, EPA's Alabama SIP disapproval was "locally or regionally applicable because...[it] regulated [an] individual state[]" and was "plainly based on a number of intensely factual determinations unique" to Alabama. Slip op. 10; *see* Pet'rs' Br. 54-60. For EPA to claim its disapproval here was "based on non-state-specific determinations" is disingenuous. *Compare* 88 Fed. Reg. at 9,355-61 (discussing each state's SIP

individually and relying on state-specific proposed disapprovals), *with* slip op. 9 (EPA did “*not* mak[e] individualized determinations” in its denial action).

And, while EPA claims it applied a consistent framework in analyzing SIPs, that does not mean its disapproval was based on a *determination* of nationwide scope or effect. *See* Pet’rs’ Reply Br. 21-24. Indeed, unlike *Hunt*, EPA’s 4-step framework is *not* a “new statutory interpretation,” slip op. 8, but is simply guidance available to states. *See* 88 Fed. Reg. at 9,340 (“states may...establish alternative approaches”).

Finally, despite Respondents’ concerns, the Fourth, Fifth, Sixth and Eighth Circuits have already determined venue for similar challenges lies in the local circuit. *See* Pet’rs’ Br. 55-56; *Missouri v. EPA*, No. 23-1719, Doc. 5281126 (8th Cir. May 26, 2023); *West Virginia v. EPA*, No. 23-1418, Doc. 51 (4th Cir. Jan. 10, 2024); *cf.* slip. op 11 (aligning with other circuits’ venue decisions).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel states that this letter complies with Fed. R. App. P. 28(j) because the body of the letter does not exceed 350 words.

Dated: February 8, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February 2024, I have filed the foregoing letter using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

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